

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

MARK J. BROOKS

v.

BOARD OF ASSESSORS OF
THE TOWN OF WORTHINGTON

Docket Nos.: F321201, F321202
F326208, F326209

Promulgated:
June 23, 2017

These are appeals under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Worthington ("assessors" or "appellee") to abate taxes on two parcels of real estate in the Town of Worthington owned by and assessed to Mark J. Brooks ("appellant") under G.L. c. 59, §§ 11 and 38 for fiscal years 2013 and 2015 ("fiscal years at issue").

Commissioner Chmielinski ("Presiding Commissioner") heard these appeals and issued single-member decisions for the appellee in accordance with G.L. c. 58A, § 1A and 831 CMR 1.20.

These findings of fact and report are made pursuant to a request the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

Mark J. Brooks, pro se, for the appellant.

Jeffrey T. Blake, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits offered into evidence at the hearing of these appeals, the Presiding Commissioner made the following findings of fact.

On January 1, 2012 and January 1, 2014, the valuation and assessment dates for fiscal years 2013 and 2015, respectively, Mark J. Brooks was the assessed owner of two adjacent parcels of land located at Lindsay Hill Road ("Parcel 1") and 148 Lindsay Hill Road ("Parcel 2") (collectively "subject properties"). Parcel 1 is a 10.66-acre parcel of vacant land. For assessment purposes, the property is identified on map 403 as block 0, lot 85. Parcel 2 contains 10.45 acres of land improved with a two-story, single-family, contemporary-style home built in 1997 ("subject dwelling"). The subject dwelling has approximately 1,814 square feet of finished living area, with a total of six rooms, including three bedrooms, as well as two full bathrooms. For assessment purposes, the property is identified on map 403 as block 0, lot 86.

For fiscal year 2013, the assessors valued Parcel 1 and Parcel 2 at \$48,800 and \$218,900, respectively, and assessed taxes thereon at the rate of \$13.36 per thousand, in the corresponding amounts of \$651.97 and \$2,924.50. In accordance with G.L. c. 59, § 57C, the appellant timely

paid the taxes due without incurring interest. On January 31, 2013, in accordance with G.L. c. 59, § 59, the appellant timely filed his abatement applications for the subject properties with the assessors, which they denied on April 16, 2013. In accordance with G.L. c. 59; §§ 64 and 65, the appellant seasonably filed his appeals with the Appellate Tax Board ("Board") on July 15, 2013.

For fiscal year 2015, the assessors valued Parcel 1 and Parcel 2 at \$52,200 and \$226,800, respectively, and assessed taxes thereon at the rate of \$13.94 per thousand, in the corresponding amounts of \$727.67 and \$3,161.59. In accordance with G.L. c. 59, § 57C, the appellant timely paid the taxes due without incurring interest. On January 31, 2015, in accordance with G.L. c. 59, § 59, the appellant timely filed his abatement applications for the subject properties with the assessors, which they denied on February 10, 2015. On May 6, 2015, in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed his appeals with the Board.

On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide these appeals.

Mr. Brooks testified on his own behalf in these appeals and offered into evidence several exhibits,

including photographs of the subject dwelling showing items of deferred maintenance and structural issues, estimates for proposed repair work, the subject properties' property record cards for the fiscal years at issue, and the property record cards of several purportedly comparable properties. For their part, the assessors primarily relied on the testimony of John Fosnot, a member of the assessors.

Mr. Brooks first argued that the subject properties were overvalued because they are located on a seasonal road, which negatively impacts their fair market values. However, he failed to offer any quantitative evidence to support his claim or provide any comparable sales that quantified any alleged detrimental impact. Mr. Fosnot addressed this issue, previously raised by the appellant in his fiscal year 2011 and 2012 appeals, and testified that although a portion of Lindsay Hill Road was closed during the winter months, the subject properties were not located within the affected area. See *Brooks v. Assessors of Worthington*, Mass. ATB Findings of Facts and Reports 2013-921, 924, *aff'd*, 87 Mass. App Ct. 1132 (2015). Furthermore, Mr. Fosnot testified that the assessors had accounted for the road conditions by giving both an "access" and a "road condition" downward adjustment, as confirmed on the subject properties' property record cards.

In support of his claim that Parcel 1 was overvalued for the fiscal years at issue, Mr. Brooks offered into evidence a single property record card for a 23.22-acre parcel of vacant land that was also located on Lindsay Hill Road and was assessed at \$56,500 and \$63,800, for fiscal years 2013 and 2015, respectively. Mr. Brooks did not, however, explain how the assessed values for this property, which is: (1) larger than Parcel 1, (2) designated as "buildable," and (3) assessed for more than the appellant's Parcel 1, related to the fair market value of Parcel 1 for the fiscal years at issue.

With respect to Parcel 2, Mr. Brooks offered into evidence the property record cards for five purportedly comparable properties that ranged in size from 0.98 acres to 5.49 acres, all considerably less than Parcel 2's 10.45 acres. These properties were improved with single-family dwellings that ranged in size from 1,524 to 2,497 square feet. The appellant argued that Parcel 2 was overvalued for the fiscal years at issue because the building values of his purportedly comparable assessment properties decreased from fiscal year 2013 to fiscal year 2015, while the subject property's building assessment increased during the same time period. Mr. Brooks did not, however, establish that these properties were sufficiently

comparable to Parcel 2 nor did he consider any adjustments to account for differences between Parcel 2 and his purportedly comparable assessments properties. Moreover, the Board found that Mr. Brooks' focus on just the building assessments of his purportedly comparable properties failed to address the fundamental issue in this appeal: whether the **overall** assessment of Parcel 2 was excessive for the fiscal years at issue.

On the basis of all of the evidence, the Presiding Commissioner found that the appellant failed to meet his burden of proving that either Parcel 1 or Parcel 2 had fair cash values less than their assessed values for fiscal years 2013 and 2015. Accordingly, the Presiding Commissioner issued decisions for the appellee in these appeals.

OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The appellant has the burden of proving that the property has a lower value than that assessed. "The burden of proof is upon the petitioner to make out its right as [a] matter of law to [an] abatement of the tax.'" *Schlaiker v. Assessors of Great Barrington*, 365 Mass. 243, 245 (1974) (quoting *Judson Freight Forwarding Co. v. Commonwealth*, 242 Mass. 47, 55 (1922)). "[T]he board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.'" *General Electric Co. v. Assessors of Lynn*, 393 Mass. 591, 598 (1984) (quoting *Schlaiker*, 365 Mass. at 245).

General Laws Chapter 58A, § 12B provides in pertinent part that "at "any hearing relative to the assessed fair cash valuation . . . of property, evidence as to the fair cash valuation . . . at which assessors have assessed other property of a comparable nature . . . shall be admissible." "The introduction of ample and substantial evidence in this regard may provide adequate support for abatement." *Chouinard v. Assessors of Natick*, Mass. ATB Findings of Fact and Reports 1998-299, 307-308 (citing *Garvey v. Assessors of West Newbury*, Mass. ATB Findings of Fact and Reports 1995-129, 135-36; *Swartz v. Assessors of Tisbury*, Mass. ATB Findings of Fact and Reports 1993-271, 279-80); see *Turner v. Assessors of Natick*, Mass. ATB

Findings of Fact and Reports 1998-309, 317-18. The assessments in a comparable-assessment analysis, like the sale prices in a comparable-sales analysis, must also be adjusted to account for differences with the subject property. See *Heitin v. Assessors of Sharon*, Mass. ATB Findings of Fact and Reports 2002-323, 334.

In the present appeals, with respect to Parcel 1, the appellant offered into evidence the property record card for a single property also located on Lindsey Hill Trail. This property was significantly larger than the subject property and arguably a superior lot, given its designation as "buildable." Despite these differences, the appellant failed to make any adjustments. Moreover, comparison to "'a single [property] does not necessarily reflect market value.'" *Franco v. Assessors of Holyoke*, Mass. ATB Findings of Fact and Reports 2008-885, 891 (citations omitted).

With respect to Parcel 2, the appellant focused primarily on the fact that the building value of his purportedly comparable assessment properties decreased during the period 2013 through 2015, while the building value for Parcel 2 increased during the same time period. A taxpayer "does not conclusively establish a right to an abatement merely by showing that his land or building is

overvalued. 'The tax on a parcel of land and the building thereon is one tax . . . although for statistical purposes they may be valued separately.'" **Hinds v. Assessors of Manchester-by-the-Sea**, Mass. ATB Findings of Fact and Reports 2006-771, 778 (quoting **Assessors of Brookline v. Prudential Insurance, Co.**, 310 Mass. 300, 317 (1941)). In abatement proceedings, "the question is whether the assessment for the parcel of real estate, including both the land and the structures thereon, is excessive. The component parts, on which that single assessment is laid, are each open to inquiry and revision by the appellate tribunal in reaching the conclusion whether that single assessment is excessive." **Massachusetts General Hospital v. Belmont**, 238 Mass. 396, 403 (1921); see also **McDonald, Trustee v. Assessors of Phillipston**, Mass. ATB Findings of Fact and Reports 2014-1014, 1023-4. In the present appeals, the Board found that the appellant did not establish that his purportedly comparable-assessment properties were reasonably similar to Parcel 2 and he did not demonstrate that the subject property's overall assessment for the fiscal years at issue exceeded its fair cash value.


Accordingly, the Presiding Commissioner found and ruled that the appellant failed to meet his burden of proving that the subject properties were overvalued for the fiscal years at issue and, therefore, issued decisions for the appellee.

THE APPELLATE TAX BOARD

By: 
Richard G. Chmielinski, Commissioner

A true copy,

Attest:


Clerk of the Board
Asst.